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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Conlon Group Arizona, LLC,

No. CV-08-0965-PHX-FJM

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Plaintiff,

ORDER

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vs.

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CNL Resort Biltmore Real Estate, Inc.;
KSL Biltmore Resort, Inc.,

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Defendants.

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The court has before it Conlon’s “Motion to Recalculate Claim Accrual Date for Statute of Limitations” (doc. 157), which we construe as a motion for reconsideration of our order dated July 27, 2009 (doc. 155).

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Conlon asks us to reconsider our conclusion that the discovery rule is not available to toll the accrual dates of the breach of contract claims. We noted in our order that the “discovery rule does not apply where a party fails to ‘exercise[] reasonable diligence in monitoring the performance of another under the contract.’ ” Order at 7 (citation omitted). We found that, although the assignor villa owners had a contractual right to review the Hotel’s rental pool books and records, there is no allegation that any assignor villa owner sought to review those records at any time, or otherwise attempted to monitor the Hotel’s performance under the contract. Therefore, we concluded that the assignor villa owners

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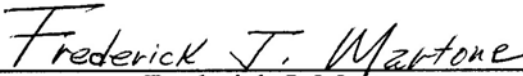
1 failed to demonstrate the exercise of reasonable diligence required for application of the
2 discovery rule.

3 We reject Conlon's argument that the assignor villa owners are entitled to demonstrate
4 their exercise of diligence through Conlon's efforts. As an assignee, Conlon steps into the
5 shoes of the assignor villa owners and its rights and defenses are strictly derivative of the
6 rights and defenses held by the assignors. See Stephens v. Textron, Inc., 127 Ariz. 227, 230,
7 619 P.2d 736, 739 (1980). Because the assignor villa owners did not exercise reasonable
8 diligence, the discovery rule is not available to them.

9 **IT IS ORDERED DENYING** Conlon's "Motion to Recalculate Claim Accrual Date
10 for Statute of Limitations" (doc. 157).

11 DATED this 26th day of August, 2009.

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Frederick J. Martone
United States District Judge